

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FLOYD TOWNSEND,

Plaintiff,

-v-

WILLIAM CLEMONS, et al.,

Defendants.

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DOCUMENT
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DATE FILED: 3-4-13

No. 12 Civ. 03434 (RJS)(SN)
ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

Plaintiff filed a Complaint on April 30, 2012 seeking injunctive relief and monetary damages relating to the allegedly unconstitutional conditions he experienced while in the custody of the New York City Department of Correction ("DOC"). The three named Defendants are William Clemons, Warden of the Robert N. Davoren Center ("RNDC"), Mr. Gumsdere, Deputy Warden of Security at RNDC, and the City of New York.

On June 11, 2013, this matter was referred to Magistrate Judge James L. Cott for general pretrial supervision and dispositive motions requiring a report and recommendation. On July 21, 2012, Defendants filed a motion to dismiss the Complaint. Despite Judge Cott's reminder and extension of time, Plaintiff never filed any opposition to Defendants' motion. On November 8, 2012, the case was reassigned to Magistrate Judge Sarah Netburn's docket. On January 30, 2013, Judge Netburn issued a Report and Recommendation (the "Report") concerning Defendants' motion to dismiss the Complaint.

In her Report, Judge Netburn advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1993). When no objections to a report and recommendation are made, the court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000).

After reviewing the record, the Court finds that Judge Netburn's well-reasoned Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety and, for the reasons set forth therein, GRANTS Defendants' motion to dismiss the Complaint with prejudice, but grants Plaintiff leave to reopen the case within 30 days by filing an amended complaint that addresses the defects in his original complaint.

The Clerk of the Court is respectfully requested to terminate the motion at Doc. No. 12.

SO ORDERED.

Dated: March 4, 2013
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

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